HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 91 of (S/S)2003

Bhaguli Devi,
Wife of late Sri Dhyani Ram,
resident of Laskarkhet (Pinglo)
Post Office – Sirkot,
Tehsil & District – Bageshwar.

....**Petitioner.**

Versus

1. State of Uttaranchal through Forest Secretary, Uttaranchal Shashan, Dehradun.
2. Chief Forest Conservator, Nainital.
3. District Forest Officer (Civil Soyam), Bageshwar.

....Respondents.

Sri M.C. Bhatt, P.B. Goswami, learned counsel for the petitioner.
Learned Standing counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri P.B. Goswami learned counsel for the petitioner and learned Standing Counsel for the respondents.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of Mandamus directing the respondents to provide her appointment in the Forest Department under Dying in Harness Rules. The petitioner, who is widow of deceased, contended that her husband was working in the Forest Department on daily wage basis since 1984 and has worked with the Department for about 16 years. The husband of the petitioner died on 29.11.2000 leaving behind the petitioner and six minor children. She belongs to backward class and has no meaning of livelihood. Petitioner made several representations to the respondents for providing her appointment in the Forest Department under Dying in Harness Rules. The first representation was made on 25.7.2002. Despite

the fact that, the petitioner is only adult member in the family and there is no other person except her, to look after six minor children, respondents Authorities have not taken any action on the representation made by the petitioner.

She has neither been appointed under Dying in Harness Rules nor has been informed as to why she has not been provided appointment.

Learned Standing Counsel has filed counter affidavit. The stand taken by the respondent is that since the petitioner's husband was not a regular employee of the Forest Department, she cannot claim for appointment under Dying in Harness Rules.

Rule 2 of the Uttar Pradesh Recruitment of Dependants of Government Servents Dying in Harness Rules, 1974, defines the Government Servant as under:-

(a) "Government Servant" means a government servant employed in connection with the affairs of Uttar Pradesh who:-

i. was permanent in such employment; or

ii. though temporary had been regularly appointed in such employment; or

iii. though not regularly appointed, had put in three years continuous service in a regular vacancy in such employment.

Petitioner is claiming benefit under Rule 2 sub Clause 3 of the aforesaid Rules.

Learned counsel for the respondents has submitted that the petitioner's husband has worked with the department for about 16 years but was appointed on daily wage basis and he does not fall under the Rule 2 Sub Clause 3 of the aforesaid Rules. Learned counsel for the petitioner has placed reliance on various decisions of Apex Court as well as this court.

The Apex Court has held in number of cases that there should be no delay in appointment for claim of

appointment on compassionate ground. The purpose of providing appointment to one of the dependants of the deceased on compassionate ground is to mitigate the hardship occurred due to death of the bread earner in the family. Such appointment, therefore, be provided immediately to redeem the family in distress.

The contention of the learned Standing Counsel is that the petitioner's husband was not appointed against any regular vacancy.

Firstly, there is no mention in the counter affidavit that the petitioner's husband was not appointed against substantive vacancy. Secondly, petitioner's husband has worked on daily wage basis against a particular duty of post for a period of about 16 years and that work is perennial in nature. The presumption would be that such an employee would be entitled for being treated to have been continuing against regular vacancy.

For the reasons recorded above, since the petitioner's husband was continuing in employment for more than 16 years, petitioner is entitled to get benefit of the Uttar Pradesh Recruitment of Dependants of Government Servants Rules 1974, which has been adopted by the state of Uttaranchal.

In view of the above discussion, I direct the respondents Authorities to consider the claim of the petitioner for providing her appointment under Uttar Pradesh Recruitment of Dependants of Government Servants Rules 1974 within a period of six weeks from the date of production of certified copy of this order.

With this direction the writ petition is finally disposed of.

(M.M. Ghildiyal, J.)

February 17, 2005
SKS